

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

**Regular Meeting: Monday: January 14, 2008:**

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, January 14, 2008.

The Commissioners present or absent were as shown following:

Present: Coates, Mahoney, Williams, Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

**Order of Agenda Approved:**

Commissioner Coates moved the Order of the Agenda be approved.

Second by Wimmer. All the Commissioners voted aye and the motion was declared carried.

**Minutes Approved:**

Commissioner Coates moved that the Minutes of the Regular Meeting of the Board held on December 31, 2007 be approved as read.

Second by Wimmer. All the Commissioners voted aye and the motion was declared carried.

**Consent Agenda Approved:**

Commissioner Coates moved the Consent Agenda be approved as follows:

- a. 1st reading of an Ordinance Amending Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Penalties for Ordinance Violations.
- b. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 12/31/07:
  - (1) Repealing Section 9-0413 of Article 9-04 of Chapter 9 of the Fargo Municipal Code Relating to Fire Hazards.
  - (2) Amending Sections 18-0308 and 18-0310 and Enacting Sections 18-0310.1 Through 18-0310.8 of Article 18-03 of Chapter 18 of the Fargo Municipal Code Relating to Use and Care of Streets and Sidewalks - Resolution setting annual application fee at \$50.00 (Attachment "A").
  - (3) To Create and Enact Article 25-36 of Chapter 25 of the Fargo Municipal Code Relating to Tanning Facilities - Resolution setting fees (Attachment "B").

- c. Year to Date - Budget to Actual Report for December 2007.
- d. Resolution Designating Depositories and Authorizing Officers to Make Deposits and Withdrawals (Attachment "C").
- e. Contracts for indigent services with the law firms of Ross Brandborg and Joe Johnson for 1/1/08 through 12/31/08.
- f. Pledged securities as of December 31, 2007.
- g. Applications for tax exemptions for improvements made to buildings:
  - (1) Linda Spitzer, 1106 5th Street South (5-year).
  - (2) Mike and Marla Schoen, 1205 21st Street South (5-year).
  - (3) Mark Crowston and John Schoenecker, 1006 27th Street North (5-year).
  - (4) Kelly and Jill Geiger, 2201 9th Street South (5-year).
  - (5) Joel Miller, 1111 9th Avenue South (5-year).
  - (6) Richard and Julia Bengston, 722 12th Street North (5-year).
  - (7) Central Door & Hardware, Inc., 602 43rd Street North (3-year).
- h. Contract with the North Dakota Department of Health for Tuberculosis screening activities (CFDA # 93.116).
- i. Health Department budget adjustments and Grant agreement with Dakota Medical Foundation to place 64 AED's with first responders in North Dakota and Minnesota.
- j. Receive and file amendment to the limited franchise agreement with Cass County Electric adding area annexed by the City on 3/12/07.
- k. Agreement for Special Improvements with Concierge Hotel Fargo, LLC on 44th Street South between 15th and 17th Avenues.
- l. Plat of Votava 2007 Addition.
- m. Plat of Osgood Villas Third Addition.
- n. Plat of Fargo Crossroads Center Addition.
- o. Change Order 01 in the amount of an increase of \$696 for the Public Works Building re-roof project.
- p. Scope of Work and Cost Proposal with Goettel & Associates in an amount not to exceed \$30,000 for cost-benefit analysis of the Southside Flood Control Project No. 5073-6.
- q. River Keepers 5-year lease of property at 5508 South University Drive.

- r. Encroachment Agreement with White Oaks Trust at 38th Street and 52nd Avenue South.
- s. Building Elevation Agreement and Easement for property in Amber Plains Second Addition.
- t. Contract Amendment No. 1 in the amount of \$20,936 for Project No. 5622-1.
- u. Change Order No. 1 for an increase of \$18,017.87 for Project No. 5653.
- v. Change Order No. 1 for an increase of \$7,251.40 for Project No. 5734-1.
- w. 5-year lease with Navistar Financial and sole source direct purchase from the manufacturer of a curb sorter for residential curbside recycling routes.
- x. Bills in the amount of \$2,848,786.30.

Second by Mahoney. On call of the roll Commissioners Coates, Mahoney, Williams, Wimmer and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Emergency Shelter Executive Director Employment Contract with Jan Eliassen Approved:**

The Board received a communication from Senior Planner Dan Mahli stating the City Commission voted last year to pursue a contract with an executive director for the emergency shelter. He said an interview committee is recommending that the City award the employment contract to Jan Eliassen. Ms. Eliassen's experience, community knowledge and obvious commitment to the mission of the emergency shelter, he said, make her the best candidate for the position. He said the executive director position will be funded with a 3-year grant from the Otto Bremer Foundation to provide operating support for an emergency shelter in Fargo.

Mr. Mahli introduced Jan Eliassen to the City Commission. He stated her experience and success with the Dakota Boys and Girls Home and her commitment to the needs of the less fortunate make her an excellent choice for the position.

Commissioner Williams said Ms. Eliassen's experience with writing and receiving grants makes her a good selection for the position.

Commissioner Coates moved the Emergency Shelter Executive Director employment contract with Jan Eliassen be approved.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

At 5:07 p.m., the Board recessed until the 5:15 o'clock p.m. scheduled Hearings.

After recess: All Commissioners present. Mayor Walaker presiding.

**Parcels of Land in Meritcare Addition, Harwoods 2 and Keeney & Devitts 2nd Addition Rezoned (702, 736, 802 and 828 Broadway; 321, 618 and 621 8th Avenue North; 731 and 827 4th Street North; 813 7th Street North; and 512 3rd Street North):**

At a Hearing held on December 12, 2007 the Fargo Planning Commission recommended approval of a change in zoning from LC, Limited Commercial to DMU, Downtown Mixed-Use on Lots 1 and 2, Block 8, Meritcare Addition; from LC, Limited Commercial to DMU, Downtown Mixed-Use on unplatted, X and Y, less west 1 foot, NW 1/4 Section 6, Township 139 North, Range 48 West, east of Block 13, Harwoods 2, Auditors Lots of 6 and 7; from LC, Limited Commercial to DMU, Downtown Mixed-Use on Lot 1, Block 6, Meritcare Addition; from MR-3, Multi-Dwelling to DMU, Downtown Mixed-Use on Lot 3, Block 8, Meritcare Addition; from MR-3, Multi-Dwelling to DMU, Downtown Mixed-Use on Lot 1, Block 7, Meritcare Addition and an unplatted 20 foot parcel (being 20 feet x 125 feet) lying adjacent to said lot, NW 1/4 of Section 6, Township 139 North, Range 48 West; from MR-3, Multi-Dwelling to DMU, Downtown Mixed-Use on Lot 2, less north 47.52 feet, Block 1, Meritcare Addition; from LC, Limited Commercial to DMU, Downtown Mixed-Use on Lot 1, Block 2, Meritcare Addition; from MR-2, Multi-Dwelling to DMU, Downtown Mixed-Use on the north 47.52 feet of Lot 2, Block 1, Meritcare Addition; from MR-3, Multi-Dwelling to DMU, Downtown Mixed-Use on unplatted in NW 1/4 of Section 6, Township 139 North, Range 48 West, Lot 9 and also a strip of land on south side of Lot, 5 feet in width north and south by 125 feet east and west less beginning at SE corner of Lot 9, then north 18 feet 6 inches then west 21 feet then south 23 feet 6 inches then east 6 feet then north 5 feet then east 15 feet to beginning; and from MR-3, Multi-Dwelling to DMU, Downtown Mixed-Use on Lot 5, Block 32, Keeney & Devitts 2nd Addition.

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

Senior Planner Jim Hinderaker stated the properties requested for rezoning are currently parking lots and the change from LC, Limited Commercial, to DMU, Downtown Mixed-Use, will bring the properties into compliance.

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that review criteria of Section 20-0906.F (1-4) has been met.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Wimmer, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

**First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Meritcare Addition, Harwoods 2 and Keeney & Devitts 2nd Addition to the City of Fargo:**

Commissioner Coates moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Meritcare Addition, Harwoods 2 and Keeney & Devitts 2nd Addition to the City of Fargo be placed on first reading.

Second by Wimmer. On call of the roll Commissioners Coates, Wimmer, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

**Parcels of Land in Erskines Addition Rezoned (1226 University Drive and 1117 13th Avenue South):**

A Hearing had been held by the Fargo Planning Commission on September 12, 2007 to consider a petition requesting that the zoning on the south 51 feet of Lots 1, 2, 3, 4 and 5 and the south 51 feet of the south 101 feet of the west 8.4 feet of Lot 6 and the east 16.6 feet of Lot 6, all of Lot 7, and the west 8.4 feet of Lot 8, Block SS of Erskines Addition be changed from NC, Neighborhood Commercial and SR-3, Single-Dwelling to LC, Limited Commercial, however, the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the zoning be changed from SR-3, Single-Dwelling to NC, Neighborhood Commercial for the south 71 feet of the east 16.6 feet of Lot 6, the south 71 feet of Lot 7, and the south 71 feet of the west 8.4 feet of Lot 8, Block SS, Erskines Addition.

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

Senior Planner Jim Hinderaker stated there have been changes to the original protest petition and as of 4:45 p.m. today, the most recent calculations indicate a protest area of 19.65%. Mr. Hinderaker said, with the last minute submittal of additional protests, he would be willing to double-check the calculations while the discussion continues.

Erin Conroy, 217 Prairiewood Drive, stated she is representing the petitioners against the rezoning request. She distributed her letter and a letter from Realtor Sharon Hilgers in support of the protest. Ms. Conroy said rezoning this area will have a negative effect on the neighborhood. Two areas of concern, she said, are the validity of the protest and fragmentation of the neighborhood. The original protest, she said, should remain in place since the City Commission voted 4 to 1 against the rezoning request the first time and there also is no method in place to remove names from the original petition which is what was done by Mr. Stremick. There is also a discrepancy, she said, in the square footage used for calculating the protest percentage between the Planning staff and the Assessor's staff figures. The property involved, she said, is a lynchpin property. She said Mr. Stremick stated before the City Commission that he will seek to continue to commercially develop the neighborhood. The Hawthorne Neighborhood Association's Plan, she said, supports the importance of maintaining the residential quality of the neighborhood. Ms. Conroy said both the Hawthorne Plan and a resolution passed at a 2006 City Commission meeting support the goal of keeping the neighborhood intact.

Gerry Severson, 1202 South University Drive, said parking is already a problem in the neighborhood and additional demands will be placed on street parking

because the busy intersection at University and 13th Avenue will make access into the parking lot more difficult.

Justin McKenzie, 1207 South University Drive, said the City Commission voted 4 to 1 against the rezoning at the October 8, 2007 City Commission meeting and they should honor that decision. He said there are two nearby strip malls that have vacancies and are suited for commercial.

Steven Stremick, 1226 South University Drive, said the owners closest to his property are not present to protest the rezoning request and the property is not fragmenting the neighborhood because the two pieces are contiguous. He said the Planning Commission voted 9-0 to recommend approval so he asked why the six week delay. His business is not retail, he stated, so it will not generate as much traffic as surrounding commercial businesses and the new parking lot will have more than enough parking with eight spots. He said traffic flow on 13th Avenue will be improved because the entrance to the parking lot will be moved to the east.

Mr. Hinderaker stated he reviewed the numbers and found one error. Two properties, he said, were switched around but did not affect the final numbers. He said the difference was only 2 square feet so the final outcome of 19.65% was an accurate figure.

In response to a question regarding the deadline for accepting protests, Planning Director Jim Gilmour said the Land Development Code states protests need to be submitted by hearing time which would be 5:15 p.m.

Carl Knudson said he lives at 1226 13 ½ Street and also owns the business at 1225 University Drive. He said property values have increased since he purchased the properties.

Curtis Knudson said his wife Karol Knudson owns the Art and Learn business and they lease the space from their son, Carl. He read a letter in support of the rezoning request and stated his son invested time and money to improve the properties.

At 6:15 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Rodney Bjornstad, 3301 13th Avenue South, said he and Steve Stremick saw an investment opportunity with the properties at University and 13th Avenue. He said he recently purchased the real estate company from Mr. Stremick and Mr. Stremick has improved the property.

Gerry Severson, 1202 South University Drive, stated he has lived in the neighborhood for many years. He said he is concerned with the current owners selling it once it is rezoned while neighbors such as him are committed to the neighborhood for the long-term.

Kim LePage Briss said she wants to help the neighborhood see this protest through. Using the calculations from the Assessor's website, she said, the protest is still above 20% and she submitted a document to the City Commission with her calculations. She said she does not agree with the square footage used by Planning Department staff because people are taxed on the Assessor's figures, not GIS calculations.

In response to Commissioner Wimmer's question regarding what is done consistently, Mr. Gilmour said the GIS figures are used in calculating protests and are the most accurate.

City Attorney Erik Johnson said normally it is quite apparent if the protest percentage is met or not. In this case, he said, the margin of error is only 1% between the 19.65% figured by Planning staff and 20.5% by Ms. LePage Briss.

Commissioner Coates moved the Board accept the calculation of protests presented by Planning staff and determine that protests have been presented representing 19.65% of the legal protest area, less than 20% which would have required a 3/4 affirmative vote.

Second by Wimmer.

Commissioner Williams said he does not support the motion because the residents are taxed on the Assessor's figures. He said both sides of the protest reached their goals based on the established figures using the Assessor's staff figures. The vote taken in October, he said, should hold based on the 23% protest area.

Mr. Johnson said the motion to reconsider the October vote makes the first hearing invalid. When the item was republished, he said, new protests were allowed to be submitted.

Commissioner Wimmer said consistency is important in how staff directs protests. He suggested an earlier deadline be set next time so staff has time to assemble and verify the protest data.

On call of the roll Commissioners Coates, Wimmer, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The motion was declared carried.

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been written protests to the request for rezoning representing 19.65% of the legal protest area.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that review criteria of Section 20-0906.F (1-4) has been met.

Second by Wimmer.

Commissioner Williams said the intent of the growth plan is to protect existing housing. By approving the zoning change, he said, the City of Fargo is losing its biggest asset which is housing.

Commissioner Coates said Mr. Stremick worked closely with Planning Department staff to meet the criteria. She said the Commission has no legal reason to deny the request.

On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Wimmer, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The Resolution was adopted.

**First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Erskines Addition to the City of Fargo:**

Commissioner Coates moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Erskines Addition to the City of Fargo be placed on first reading.

Second by Wimmer. On call of the roll Commissioners Coates, Wimmer, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The motion was declared carried.

Commissioner Coates moved that the Board adjourn to 5:00 o'clock p.m., Monday, January 28, 2008.

Second by Wimmer. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 6:50 o'clock p.m.